IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17235 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAURASHTRA UNIVERSITY - Petitioner(s)
Versus
MOHMMADRAFIQ ISMAILBHAI BELIM - Respondent(s)

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Appearance :
MR AR THACKER for Petitioner(s) : 1,
Mr A H Shah for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 11/08/2006

ORAL JUDGMENT

1. Though the petition is styled as a petition under Articles 226 and 227 of the Constitution,

it, in reality, challenges the validity of the judgment and order dated 12.9.2005 of the Gujarat University Tribunal (for short, 'the Tribunal') in Application No.44 of 2004 whereby the service of the respondent is ordered to be regularised on the post of Helper. The petition could have more appropriately been made and entertained under Article 227 of the Constitution.

2. Challenging the above judgment and order, the learned counsel for the petitioner has reiterated the contention that the very initial appointment of the petitioner was not legal and the Tribunal had no jurisdiction to order regularisation of the service of the respondent. The learned counsel relied upon the provisions of sections 7 and 8 of the Gujarat University Service Tribunal Act, 1983 to submit that the disputes regarding dismissal, removal or reduction in rank could be entertained by the Tribunal and regularisation of service was not within the scope of the powers of

the Tribunal. This contention has to be stated to be rejected in view of the express provisions of section 8 under which any dispute between the University and any University employee which is connected with the conditions of service of such employee could be taken to the Tribunal by making an application for the decision of the dispute. The provisions of section 7 of the Act also expressly states that the Tribunal shall have jurisdiction to entertain and decide the disputes referred to in section 8. Therefore, there is no substance in the contention that the Tribunal had no jurisdiction to decide the dispute regarding regularisation of service of the employee of University.

3. As regards the other contention that the respondent was not legally appointed by the petitioner, there is a clear finding recorded by the Tribunal on the basis of the affidavit of the Registrar of the University that the respondent

was holding the post of Helper since 04.7.1988 and by virtue of the Resolution dated 24.5.1994 the respondent was entitled to have benefits of the same at par with other persons holding other posts which were duly approved by the Government. In any case, the affidavit of the Incharge Registrar filed on behalf of the petitioner in terms stated that, the respondent was already given the benefits which were available to the regular employees which included increment, leave, dress etc. Thus, in short, not only that the respondent was serving against a post since the year 1988 but that post was formally regularized by a conscious decision of the Government expressly in terms of the Resolution dated 24.5.1994. The respondent had worked for 10 more years thereafter before the impugned judgment.

4. Learned counsel Mr Thacker has relied upon the recent decision of the Constitution Bench of

the Supreme Court in ***Secretary, State of Karnataka & Ors. V, Umadevi & ors. (JT 2006 (4) SC 420)*** and argued that the service of the petitioner could not be regularized in view of illegality in the initial appointment of the respondent. However, the action of the petitioner in appointing the respondent 18 years ago and his continuous service under the petitioner against a vacant post on regular basis, cannot support presumption of illegality in absence of any material in that regard. On the contrary, as discussed in the impugned judgment, this appointment and service of the respondent could, at the most, be said to be irregular in which case, it would be covered by the observations made by the Supreme Court in para 44 in ***Umadevi's*** case (supra). The learned counsel also relied upon the Full Bench decision of this Court in ***Amreli Municipality v. Gujarat Pradesh Municipal Employees Union*** (2004 (3) GLR 1841).

5. Therefore, no infirmity, much less any error apparent on the face of the record could be shown in the impugned judgment and order. Accordingly the petition is dismissed *in limine.*

[D. H. Waghela, J.]

msp